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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

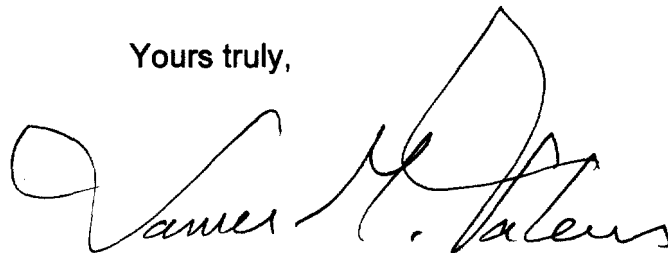
**Re: Comments in CI Docket No. 98-69,
Amendment of Part 2, Subpart K of the Rules**

Dear Ms. Salas:

Enclosed herewith are an original and four copies of Iridium U.S., L.P.'s Comments in the above-referenced proceeding. Please date stamp and return the extra copy that is enclosed.

Please do not hesitate to contact us if you have any questions.

Yours truly,



James M. Talens

Counsel for Iridium U.S., L.P.

Enclosures

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of

**Amendment of Part 2, Subpart K of the
Commission's Rules Regarding the
Importation of Radio Frequency
Devices Capable of Causing Harmful
Interference**

CI Docket No. 98-69

COMMENTS OF IRIDIUM NORTH AMERICA

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. §1.415, Iridium U.S., L.P ("Iridium North America" or "INA") hereby submits these Comments in response to the Commission's Order and Notice of Proposed Rule Making in the above-captioned proceeding.¹

INA is an international CMRS carrier responsible in the U.S. for obtaining licenses and authorizations, constructing and operating gateway Earth station(s), connecting the Iridium[®] system space segment to the public switched telephone network, marketing Iridium services, selecting service providers, and managing relations with subscribers directly or through service providers. As part of these functions, it is also responsible for importing and distributing

¹ In the Matter of Amendment of Part 2, Subpart K of the Commission's Rules Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference, Order and Notice of Proposed Rule Making, 63 Fed. Reg. 35,901 (July 1, 1998) ("NPRM").

Iridium subscriber units ("ISUs"), which provide subscribers with mobile access to the satellite system as well as to terrestrial wireless systems.²

INA supports the Commission's decision with regard to reassigning to the Office of Engineering and Technology ("OET") the responsibility of overseeing waiver requests concerning the maximum numbers of radio frequency units that can be imported under the import exemptions set forth in Section 2.1204 of the Rules. INA also favors the Commission's proposal that an original FCC Form 740 be filed upon importation of radio frequency equipment only with the U.S. Customs Service. INA is concerned, however, that the Commission's proposal to prevent importation of radio frequency devices that are intended for export will unintentionally restrict INA's ability to support certain types of ISUs that are intended to be used, but not exported, overseas.

Currently, Section 2.1204(a)(5) of the Rules states that, "(a) [r]adio frequency devices may be imported only if one or more of these conditions are met: . . . (5) [t]he radio frequency device is being imported solely for export. The device will not be marketed or offered for sale for use in the U.S." The Commission notes that the enforcement of this exemption for

² The Iridium system will provide voice, data and paging services on a global basis over a network of 66 low-Earth orbit satellites and their related control and gateway facilities. The FCC has already licensed the Iridium space segment, U.S. gateway Earth station and ISU handsets needed to initiate service to or from the United States. See Application of Motorola Satellite Communications, Inc. for Authority to Construct, Launch and Operate a Low Earth Orbit Satellite System in the 1616-1626.5 MHz Band, Order and Authorization, 10 FCC Rcd 2268 (1995); Erratum, 10 FCC Rcd 3925 (1995); reconsideration denied, Memorandum Opinion and Order, 3 C.R. (Pike and Fischer) 703 (1996); Application of U.S. Leo Services, Inc. For a License to Construct and Operate Transmit-Receive Gateway Fixed Earth Station Facilities for Use With the IRIDIUM System in the 19.4-19.6 GHz and 29.1-29.3 GHz Bands, Order and Authorization, 11 FCC Rcd 13962 (1996); Application of U.S. Leo Services, Inc. For Blanket Authority to Construct and Operate Up to 200,000 Portable Handheld Earth Stations for Use With the IRIDIUM System in the 1616-1626.5 MHz Band, Order and Authorization, Order and Authorization, 11 FCC Rcd 20474 (1996)

equipment imported solely for export has been “problematic.”³ Instead of exporting devices as required, some U.S. citizens apparently have sold them within the U.S., where they have been used and have caused interference to authorized services. The Commission states that its experience has shown that the analysis underlying its current exemption was “very optimistic but incorrect.”⁴ In order to close this “loophole” in the regulation and “make the importation constraint consistent with the constraints of U.S. manufacturers who, if they produce unapproved devices, must do so solely for export,” the Commission proposes to delete the two words “for use” in Section 2.1204(a)(5) of the “unintended means for unauthorized devices from entering this country.”⁵ However, the Commission’s specific proposal is far too broad and will cause serious harm to one of INA’s planned communications businesses.

INA will be importing radio frequency devices from foreign manufacturers that can provide U.S. subscribers with the capability of communicating directly with the Iridium system or with a local terrestrial wireless service provider. Within the U.S., of course, this does not raise an issue for this proceeding because any terrestrial wireless adapter will comply with applicable U.S. standards and licensing requirements. However, some U.S. subscribers may need to travel overseas, where the terrestrial wireless standards and spectrum usage are incompatible with U.S. terrestrial wireless systems. For these subscribers, INA will be prepared to sell or lease a “cellular handset” that will permit the subscriber to use his or her Iridium ISU to access terrestrial wireless services in the destination country.

The cellular handset will have been imported into the U.S. for use overseas, but it

³ NPRM at para. 6.

⁴ Id. at paras. 7-8.

⁵ Id. at para. 9.

will not be “exported” within the meaning of Section 2.1204. Nevertheless, under the current wording of the Rules and the Commission’s original intent, offering the device for sale for use in the U.S. is prohibited, whereas for sale alone would not necessarily be prohibited, provided there was an intention and a reasonable expectation to use the device only overseas.⁶ The proposed change in Section 2.1204(a)(5), on the other hand, is intended to prohibit importation of an unlicensed radio frequency device that is marketed or offered for sale in the U.S., independent of where it is intended to be used. Thus, the proposed language appears to foreclose INA’s plans for leasing or selling imported cellular handsets intended for and solely capable of use overseas. This is obviously not what the Commission intended by this NPRM, and the unanticipated result should not be allowed to occur.

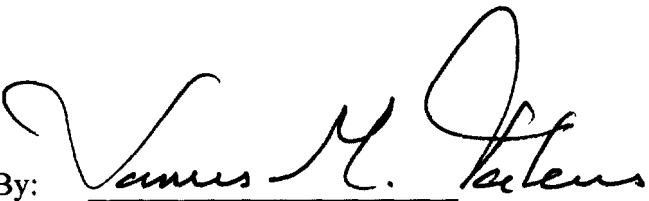
INA proposes an alternative to the Commission’s language that would accomplish the Commission’s goal of closing the “loophole” of Section 2.1204(a)(5), yet allow importation of unlicensed radio frequency devices that can only be used overseas. INA’s proposed revision would read, “. . . (5) [t]he radio frequency device is being imported solely for export or is inherently capable of functioning only outside the U.S. Except for devices inherently capable of functioning only outside the U.S., no radio frequency device may be marketed or offered for sale in the U.S.” The language “inherently capable of functioning only outside the U.S.” defines a technology-based exception to the broad prohibition the Commission seeks by this NPRM, permitting INA and other authorized entities to pursue telecommunications businesses such as importing and selling cellular handsets to U.S. subscribers traveling overseas. INA believes this

⁶ Id. at paras. 7-8.

change is in the public interest and should be adopted as part of Section 2.1204(a)(5).

Accordingly, INA asks the Commission to adopt a revision to Section 2.1204(a)(5) that does not preclude INA and others from providing subscribers with radio frequency devices that are capable of operating only overseas.

Respectfully submitted,

By: 

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Date: August 3, 1998